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## Labor Rights Report: Australia

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## Labor Rights Report: Australia

### Abstract

[Excerpt] This report examines the labor rights situation in Australia. The labor rights taken into consideration include those rights defined as “core labor standards” by Section 2113 of the Trade Act (19 U.S.C. 3813(6)):

1. the right of association;
2. the right to organize and bargain collectively;
3. a prohibition on the use of any form of forced or compulsory labor;
4. a minimum age for the employment of children; and
5. acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Because of the emphasis in the Trade Act on the elimination of the worst forms of child labor, we have broadened the discussion not only to include minimum age for employment of children but also the effective elimination of the worst forms of child labor.

### Keywords

Australia, labor rights, organizing, child labor, working conditions

### Comments

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U.S. DEPARTMENT OF LABOR  
Bureau of International Labor Affairs

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**Australia**  
**Labor Rights Report**

June 8, 2004

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## **I. Introduction**

This report on labor rights in Australia has been prepared pursuant to section 2102(c)(8) of the Trade Act of 2002 (“Trade Act”)(Pub. L. No. 107-210). Section 2102(c)(8) provides that the President shall:

[I]n connection with any trade negotiations entered into under this Act, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating. . .

The President, by Executive Order 13277 (67 Fed. Reg. 70305), assigned his responsibilities under section 2102(c)(8) of the Trade Act to the Secretary of Labor and provided that they be carried out in consultation with the Secretary of State and the United States Trade Representative. The Secretary of Labor subsequently provided that such responsibilities would be carried out by the Secretary of State, the United States Trade Representative and the Secretary of Labor (67 Fed. Reg. 77812).

## **II. Labor Rights**

This report examines the labor rights situation in Australia. The labor rights taken into consideration include those rights defined as “core labor standards” by Section 2113 of the Trade Act (19 U.S.C. 3813(6)):

- (1) the right of association;
- (2) the right to organize and bargain collectively;
- (3) a prohibition on the use of any form of forced or compulsory labor;
- (4) a minimum age for the employment of children; and
- (5) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Because of the emphasis in the Trade Act on the elimination of the worst forms of child labor,<sup>1</sup> we have broadened the discussion not only to include minimum age for employment of children but also the effective elimination of the worst forms of child labor.

The report first describes the national legal framework. It then describes the administration of labor law, labor institutions, and the system of labor justice. With regard to each of the defined

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<sup>1</sup> Section 2102(a) sets out overall trade negotiating objectives of the United States; among them [Section 2102(a)(9)] is “to promote universal ratification and full compliance with ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.” Section 2102(b) sets out principal negotiating objectives of the United States; among them [Section 2102(b)(17)] is “The principal negotiating objective of the United States with respect to the trade-related aspects of the worst forms of child labor is to seek commitments by parties to trade agreements to vigorously enforce their own laws prohibiting the worst forms of child labor.”

labor rights, the report describes the relevant legal framework (national law and international conventions) and practice. More detailed information on the extent to which Australia has in effect laws governing exploitative child labor is provided in a companion report mandated by Section 2102(c)(9) of the Trade Act.

This report relies on information obtained from the Department of State, the U.S. Embassy in Australia, and other U.S. Government reports. It also relies upon a wide variety of reports and materials originating from Australia, international organizations, and non-governmental organizations (NGOs), as well as consultations held by U.S. Department of Labor officials with Australian government officials, representatives of worker and employer organizations, and NGOs, pursuant to Section 2102(c) (7) of the Trade Act.<sup>2</sup> Finally, the report also makes use of information submitted in response to a Department of Labor request for public comment in the *Federal Register* on July 18, 2003.<sup>3</sup>

### **III. Legal Framework for Labor Rights**

Australia is a constitutional democracy with a Federal parliamentary form of government. The Federal system includes six States and two territories: the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia. The industrial relations system in Australia is governed by several key labor laws and specialized institutions, which operate at both the State and Federal level.

The Federal Government draws on the corporations power of the Australian Constitution to establish and administer labor laws dealing with the right to freedom of association. With respect to collective bargaining, the Constitution confers on the Federal government the authority to provide for “conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State.”<sup>4</sup> This authority is exercised through the Australian Industrial Relations Commission (AIRC). State governments may pass and enforce legislation concerning any aspect of industrial relations, including laws on freedom of association and collective bargaining, and State Industrial Relations Commissions (IRCs) regulate collective bargaining and disputes settlement for companies engaged in intrastate business.<sup>5</sup>

Authority to regulate wages and working conditions resides primarily with the State governments. However, the AIRC exercises considerable regulatory authority on these issues through the system of awards (akin to arbitral findings) and the registration of collective bargaining agreements. The result is a network of Federal and State laws and institutions that work in a parallel fashion, with some overlap.

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<sup>2</sup> The Consultations were held in Canberra and Melbourne on March 18-20, 2003.

<sup>3</sup> U.S. Department of Labor, “Request for Information Concerning Labor Rights in Australia and its Laws Governing Exploitative Child Labor,” *Federal Register* Vol. 68, No. 138, 42783 - 42784. The Department received two comments, one from the AFL-CIO and one from the Department of Employment and Working Relations (DEWR) of Australia in response to this notice.

<sup>4</sup> *Constitution of Australia*, Section 51 (xxxv), updated July 9, 1990; available from [http://www.statusquo.org/constitution/constitution\\_index.htm](http://www.statusquo.org/constitution/constitution_index.htm).

<sup>5</sup> Department of Employment and Workplace Relations, *Awards*, [online] [cited February 10, 2004] available from <http://www.wagenet.gov.au/WageNet/templates/PageMaker.asp?category=FactSheets&fileName=/Wagenet/FactSheets/DataFiles/General/Awards.html>.

The minimum age of work is regulated primarily by the States through compulsory education laws, although awards issued by the AIRC and State IRCs often regulate certain aspects of employment of children and young people.

The Workplace Relations Act 1996 (WRA) is the primary legislation regulating industrial relations at the Federal level. The WRA addresses industrial relations, the role of the AIRC, trade union affairs, the work of the Office of the Employment Advocate (OEA), collective bargaining, unlawful dismissals, and labor legislation for the State of Victoria.

The States maintain separate labor laws, some of which are listed below:

- New South Wales: The Industrial Relations Act 1996;
- Queensland: Industrial Relations Act 1999;
- Western Australia: Industrial Relations Act 1979;
- South Australia: Industrial and Employee Relations Act 1994; and
- Tasmania: The Industrial Relations Act 1984 and Industrial Relations Amendment Act 1997.

Federal laws, including the Federal Award system, cover the State of Victoria. Victoria voluntarily transferred its legislative and administrative powers on labor issues to the Federal government in 1996. The Australian Capital Territory and Northern Territory adhere to Federal law regarding collective bargaining and freedom of association but legislate and implement their own laws regarding working conditions.<sup>6</sup>

## **IV. Administration of Labor Law**

### **A. Labor Institutions**

The Federal industrial relations system includes one primary cabinet level agency, the Department of Employment and Workplace Relations (DEWR), and seven bodies that administer various aspects of Federal labor law: the Australian Industrial Relations Commission (AIRC); the Office of the Employment Advocate (OEA); Comcare; the National Occupational Health and Safety Commission (NOHSC); the Equal Opportunity for Women in the Workplace Agency (EOWA); the Defence Force Remuneration Tribunal; and the Remuneration Tribunal.

- *The Department of Employment and Workplace Relations (DEWR)* is responsible for overseeing the delivery of job placement and training services and the development and implementation of policy and legislation on workplace relations. The DEWR has two major components, each overseen by a Deputy Secretary. The Employment group of the Department provides policy advice, conducts research and evaluation of the labor market, and oversees the delivery of employment and training services. The Workplace Relations group provides policy advice and develops legislation on labor-

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<sup>6</sup> World Legal Information Institute, *Australian Workplace Relations Law Project*, [online] [cited January 15, 2004] available from <http://www.worldlii.org/catalog/2456.html>.

management relations. Operationally, it oversees workplace relations services, Federal public sector employment, and employee entitlements.<sup>7</sup>

- *The Australian Industrial Relations Commission (AIRC)* is a separate statutory agency that facilitates dispute resolution in the private sector relating to Federal collective and individual agreements and certifies Federal awards. Federal awards are arbitrated agreements outlining minimum wages and conditions of employment for specified industries. The contents of awards are legally binding on employers listed in the *parties bound clause* of the agreement or members of an employer association that is bound by the award. The AIRC also makes determinations regarding unfair dismissal claims and addresses trade union registration issues.<sup>8</sup> It does not initiate its own investigations of freedom of association at the Federal level without receiving specific complaints. Each State has established a separate State Industrial Relations Commission that serves a similar purpose as the Federal body, but covering State awards. State tribunals are also part of the State judicial system, giving them greater enforcement powers than the Federal AIRC.
- *The Office of the Employment Advocate (OEA)* was established under the Workplace Relations Act 1996. Although it is part of the Department of Employment & Workplace Relations, it operates autonomously within the Department. The OEA manages the review and certification process for Australian Workplace Agreements (AWAs) and provides guidance to employers and employees regarding their rights and responsibilities under the Workplace Relations Act 1996 (WRA), with particular regard to AWAs and freedom of association. (See Chapter III. B. for a discussion of AWAs.) The OEA also provides legal assistance to employers and workers involved in a dispute. In exercising its oversight, the OEA must consider the needs of disadvantaged workers such as women, non-English speakers, young people, apprentices, trainees and part time workers, and must promote family friendly benefits for workers.<sup>9</sup> The OEA also enforces certain additional provisions of the WRA (also referred to as the Labor Code). The OEA gives advice and can investigate complaints on matters that affect employee and employer rights, including freedom of association, right of entry for union officials into workplaces, and the National Code of Practice for the construction industry. Unlike the AIRC, the OEA can initiate its own investigation of freedom of association breaches at the Federal level without receiving specific complaints.
- *Comcare* is responsible for workplace safety, rehabilitation and compensation in the Commonwealth jurisdiction, primarily Federal employees and those of the Australian Capital Territory (ACT).

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<sup>7</sup> Australian Department of Employment and Workplace Relations (DEWR), *Department of Employment and Workplace Relations Annual Report, 2002-2003*, Commonwealth of Australia, 2003, available from <http://www.annualreport.dewrsb.gov.au/AnnualReport/2003/home/>, Overview.

<sup>8</sup> Australian Industrial Relations Commission (AIRC), *AIRC Annual Report, 2002-2003*, Work of the Commission, Commonwealth of Australia, 2003 available from <http://www.airc.gov.au>.

<sup>9</sup> *Workplace Relations Act, 1996*, Section 83BB, December 5, 2003; available from <http://www.workplace.gov.au/Workplace/WPDisplay/0,1251,a3%253D3557%2526a0%253D0%2526a1%253D517%2526a2%253D625,00.html>. See also Office of the Employment Advocate (OEA), *OEA Annual Report 2002-2003*, Commonwealth of Australia, 2003 available from <http://www.oea.gov.au>, 12.



- The *National Occupational Health and Safety Commission (NOHSC)* is a tripartite body, with members appointed by Federal, State and territory governments, the Australian Chamber of Commerce and Industry (ACCI), and the Australian Council of Trade Unions (ACTU). The NOHSC conducts research, collects statistics, and develops national standards regarding occupational safety and health. The Federal government is limited by the Constitution and cannot legislate working conditions, thus the NOHSC does not make or implement occupational health and safety legislation. State and territory governments may amend NOHSC documents to suit their own regulatory process before adopting into legal force.
- The *Equal Opportunity for Women in the Workplace Agency (EOWA)* is a statutory authority located within the portfolio of the DEWR. EOWA's role is to administer the *Equal Opportunity for Women in the Workplace Act 1999 (Commonwealth)* and through education, assist organizations to achieve equal opportunity for women. The Act requires companies and other entities with 100 or more people to establish a workplace program to remove the barriers to women entering and advancing in the workplace. Employers who are required to report under the Act and fail to meet the requirements of the legislation may be sanctioned by being named in a public report to the Parliament or prohibited from tendering for government contracts and industry assistance.
- The *Defense Force Remuneration Tribunal* inquires into and determines pay and related allowances for the Regular and Reserve members of the Australian Defense Force (ADF). The Tribunal makes binding determinations in accordance with the (Australian) Defence Act 1903.
- The *Remuneration Tribunal* determines, reports on and provides advice about remuneration, including allowances and entitlements, within the Federal jurisdiction. As a statutory body, the Tribunal's decisions are binding.

The DEWR is mandated to conduct inspections and monitor compliance with the WRA and certified awards, collective agreements or AWAs.<sup>10</sup> The DEWR contracts its labor inspection responsibilities out to both State governments and private entities. In States with Federal inspection contracts, workers may lodge a complaint in “one-stop shops” for State and Federal labor inspection. Inspections are both random and complaint driven but State inspectorates are largely set up to conduct more proactive inspections than the Federal inspectorate, which is largely reactive.<sup>11</sup> The DEWR also monitors a contract with a private company, Working Women's Centres, which conducts all Federal labor inspections in Sydney, Brisbane, Adelaide, Hobart and Darwin.

Inspectors are empowered to prosecute violations of the WRA, awards, or certified agreements.<sup>12</sup> In practice, if a violation is found labor inspectors will first approach the employer to negotiate a resolution to the problem. If the employer engages in repeated violations, or if the offense is egregious, the inspector will file a case with the Federal Industrial Magistrates Court.<sup>13</sup> Any

<sup>10</sup> *Workplace Relations Act, 1996*, Section 285B.

<sup>11</sup> Labor Officer – U.S. Embassy Canberra, electronic communication to USDOL official, February 11, 2004.

<sup>12</sup> *Workplace Relations Act, 1996*, Section 84 (4).

<sup>13</sup> U.S. Embassy Canberra, electronic communication, February 11, 2004.

petitioner can bring a case to the Federal court system unless the petitioner has already taken the case to a State court. Labor unions may also pursue a charge in the Federal Industrial Magistrates Court. However, in practice labor unions rarely bring a case to court due to cost constraints, unless they are confident the court will find in their favor and make an example of the company. Labor unions have expressed concern about the restrictions imposed on the AIRC in the WRA to arbitrate disputes, leaving only the costly and lengthy court system to resolve workplace breaches.<sup>14</sup>

## **B. Labor Courts**

The Federal Court of Australia holds jurisdiction over the Federal industrial relations system, specifically the provisions of the WRA.<sup>15</sup> The Federal Industrial Magistrates Court is a lower level court, which also holds jurisdiction over violations of the WRA. A worker or employer may appeal the finding of the Federal Industrial Magistrates Court to the Federal Court of Australia, where one judge selected from the Industrial Relations Panel hears the case. The Industrial Relations Panel is composed of judges with labor law experience who hear industrial relations cases. The findings of the judge may be appealed to a panel of judges in the Federal Court of Australia. The findings of the panel may be appealed to the High Court of Australia.

The duties of the Industrial Relations Court of Australia (IRCA) were transferred to the Federal Court of Australia in the WRA. For constitutional reasons, the IRCA maintains jurisdiction over cases in which it has held substantive hearings. The IRCA is officially in operation until its remaining judges retire.<sup>16</sup>

The courts may impose a variety of civil penalties on violators, order the parties to cease unlawful conduct, award compensation to workers, and require an employer to reinstate an employee who was unfairly dismissed.<sup>17</sup>

## **V. Labor Rights and their Application**

### **A. Freedom of Association**

The Workplace Relations Act 1996 (WRA) guarantees every worker the right of freedom of association.<sup>18</sup> Trade union affiliation is voluntary, and workers may not be required to join a trade union as a precondition for employment. This provision effectively bans “closed shops.”<sup>19</sup>

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<sup>14</sup> Ibid. The WRA significantly reduced the scope of awards from broad and comprehensive instruments to narrower agreements that cover only twenty “allowable” matters. See p. 13 and footnote 50.

<sup>15</sup> *Workplace Relations Act, 1996*, Section 412.

<sup>16</sup> Labor Officer – U.S. Embassy Canberra, electronic communication to USDOL official, January 23, 2004.

<sup>17</sup> *Workplace Relations Act, 1996*, Section 298U.

<sup>18</sup> Ibid., Section IV. See also Office of the Employment Advocate (OEA), *Freedom of Association*; available from [http://www.oea.gov.au/graphics.asp?showdoc=/home/publications-freedom\\_of\\_association.asp&SubMenu=4&Page=1](http://www.oea.gov.au/graphics.asp?showdoc=/home/publications-freedom_of_association.asp&SubMenu=4&Page=1).

<sup>19</sup> The AFL-CIO and ACTU claim this limits the ability of trade unions to organize. See *Labor Rights and Child Labor Laws in Australia Reports Pursuant to the Trade Act of 2002, Section 2102(c)(8)-(9)*, American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), September 2, 2003. However, the ILO is neutral on this issue, recognizing that Article 2 of ILO Convention No. 87 “leaves it to the practice and regulations of each State to decide whether it is appropriate to guarantee the rights of workers not to join an occupational organization, or on the other hand, to authorize and where necessary to regulate the use of union security clauses in practice.” See International Labor

Employers are prohibited from dismissing, refusing to employ or offering less favorable conditions to a trade union member. The law prescribes civil penalties of up to AUS\$2,000 (US\$1495) for individuals and AUS\$10,000 (US\$7577) for corporations for violations.<sup>20</sup>

Federal freedom of association legislation applies to corporations involved in inter-State commerce, territories and the State of Victoria, and is not intended to limit simultaneous operation of State laws regarding freedom of association. Federal law takes precedence if there are inconsistencies between State and Federal laws.<sup>21</sup> The WRA prohibits a worker or company from filing a complaint in both the Federal and State courts. In practice complainants usually base their decision on which court affords the best possibility of a favorable outcome.<sup>22</sup>

## **1. Trade Unions**

The Australian Council of Trade Unions (ACTU) is an umbrella organization comprised of 45 registered unions and 1.8 million workers. Approximately 45 percent of the workforce is unionized and unions have a particularly strong influence in crucial sectors such as mining (88 percent), transport, construction and manufacturing (81 percent), and the public sector (50 percent). All trade unions, federations and confederations have the right to affiliate with international trade union organizations. The ACTU is affiliated with the International Confederation of Free Trade Unions (ICFTU) and it represents Australian workers before the International Labor Organization (ILO), the Organization of Economic Development (OECD) Trade Union Advisory Committee (TUAC), the South Pacific and Oceanic Council of Trade Unions, the Asian Pacific Labor Network, and the Southern Initiative on Trade Union Rights.<sup>23</sup>

The ACTU is politically associated with the Australian Labor Party (ALP), which is currently the opposition party. Many of the ALP's leading figures and Shadow Ministers are former trade union leaders or have close ties to the labor movement.

Trade unions may register voluntarily with the Australian Industrial Relations Commission (AIRC), although registration is not a precondition for their operation. Registration confers certain advantages, such as the opportunity to register as a corporate and legal entity, legal standing before the AIRC and Federal Court of Australia, and a legal capacity to be covered by an award and/or other enterprise level agreements. If a trade union is affiliated with an umbrella organization, or if it operates in more than one State, only the larger organization can register. In order to be registered a trade union must be a bona fide employee organization of more than 50 workers and maintain rules for the democratic election of officers, financial management, and the terms and conditions of membership. Non-compliance with awards and orders of the AIRC can result in the cancellation of a trade union's registration. Workers must meet the eligibility

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Conference, 81<sup>st</sup> Session, 1994, Report III (part 4B), General Survey of the Reports on the Freedom of Association and the Right to Organize Convention (No. 87), 1948 and the Right to Organize and Collective Bargaining Convention (No. 98), 1949.

<sup>20</sup> *Workplace Relations Act, 1996*, Section 298 A and 298 U.

<sup>21</sup> *Ibid.*, Sections 298 G, 298 H and 298 J.

<sup>22</sup> Labor Officer – U.S. Embassy Canberra, electronic communication to USDOL official, January 23, 2004.

<sup>23</sup> U.S. Department of Labor, Bureau of International Labor Affairs and U.S. Embassy Canberra, *Foreign Labor Trends: Australia*, (Washington, D.C.: Government Printing Office, 2003), 5-6.

requirements of the individual union and pay required membership fees in order to become members of a registered trade union.<sup>24</sup>

Australia ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize in 1973.

## **2. Right to Strike**

Australia's labor laws limit the time period during which a legal strike can take place. The WRA prohibits strikes in companies engaged in interstate commerce, except during negotiations of a new enterprise agreement.<sup>25</sup> By law, a strike may not take place while a workplace agreement is in place. If a strike occurs during the negotiations period, it is considered a protected action and workers are protected from civil liability. Employers may not sue strikers for their actions during protected strikes, unless they involve personal injury, defamation, and destruction of property, theft or a secondary boycott. In accordance with the Trade Practices Act (TPA) a strike may not be protected if the reasons for instigating the strike do not directly pertain to a concern raised in negotiations.<sup>26</sup> The AIRC may suspend a bargaining period, and therefore strike activity, for several reasons: genuine bargaining is not occurring; the bargaining parties are not adhering to AIRC directions; the strike threatens to endanger lives, personal safety, health or welfare; the strike could cause significant damage to the Australian economy or an important part of it; and the parties are unable or unlikely to reach agreement. If the AIRC determines that no resolution appears possible, it will forward the case to compulsory arbitration.<sup>27</sup>

There are additional restrictions on strikes. Trade unions pursuing an industrial action that interferes with trade or commerce may lose their registration.<sup>28</sup> Strikers may not initiate an industrial action if the Governor-General determines that a strike may threaten trade or commerce with other countries. Through the Crimes Act 1914, strikers may be sued if it is determined that the strike may interfere with the ability of the Australian government to conduct business or if it impedes the flow of goods and services of companies involved in international trade.<sup>29</sup>

In 2001, the International Labor Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEACR) raised concerns about the inconsistencies of the right to strike provisions of the WRA and the TPA with ILO Convention No. 87 on the Freedom of Association and Protection of the Right to Organize. The Committee suggested that the Government establish a system of minimum services in areas of importance to the Australian

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<sup>24</sup> Government of Australia, *Australia's Report to the OECD Under The International Covenant On Economic, Social And Cultural Rights 1990-1997*.

<sup>25</sup> *Workplace Relations Act, 1996*, 170 MN.

<sup>26</sup> *Trade Practices Act, 1974*, Section 45 D thru E, available from <http://scaletext.law.gov.au/html/pasteact/0/115/top.htm>.

<sup>27</sup> *Workplace Relations Act, 1996*, Section 170.

<sup>28</sup> *Ibid.*, Section 298. See also International Labor Conference, 89th Session, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, 2001, 221.

<sup>29</sup> *Crimes Act, 1914*, Section 30 J. The Government noted that the provisions related to international commerce in the *Crimes Act, 1914* have not been enforced for over 40 years. See also International Labor Conference, 91st Session, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, 2003, 219.

economy, rather than impose an outright ban on strikes in those sectors.<sup>30</sup> The CEACR requested that the Government amend the WRA, TPA and the Crimes Act to allow workers to strike without restriction against employers unless the workers provide essential services.<sup>31</sup>

In 2003, the ILO CEACR also raised concerns about restrictions in the WRA and TPA against sympathy boycotts.<sup>32</sup> The WRA effectively prohibits any boycott action taken against employers who are not involved in the initial dispute and imposes strict civil penalties on workers who violate this provision.<sup>33</sup> The TPA prohibits a wide range of boycott and sympathy action.<sup>34</sup> Industrial action is unprotected if it involves a secondary boycott, regardless of whether the strike takes place during a protected bargaining period.<sup>35</sup> In 2004 the CEACR again called on the Government to amend its labor legislation to allow workers to engage in sympathy strikes, as long as the initial strike they are supporting is legal.<sup>36</sup>

Workers are forbidden from receiving strike pay from their employer, as common law denies compensation to workers who do not perform the work outlined in their employment contracts. While ILO Convention No. 87 does not require that employers pay striking workers, the CEACR considers that forbidding strike pay by law is inconsistent with the Convention.<sup>37</sup> The Committee requested the Government of Australia to amend the WRA and TPA to allow the parties involved in a strike to negotiate the issue of strike pay.<sup>38</sup>

In response to the abovementioned issues related to Convention No. 87 the Australian Government responded that it is not contemplating legislative reform at this time.<sup>39</sup>

As of June 2003, the number of working days lost to industrial action stood at a historical low of 30 days per 1,000 workers. During a one-year time frame between 2001 and 2002, the annual number of workdays lost to industrial action was 41 per 1,000 workers and in 2000/2001 it was 45 workdays per 1,000 workers. In 1999-2000 it was 104 per 1,000 workers.<sup>40</sup> A total of 329,300 workdays were lost due to strikes during 2001-2002, down from 794,100 in 1999-2000.<sup>41</sup>

## **B. Right to Bargain Collectively**

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<sup>30</sup> International Labor Conference, 89th Session, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, 2001, 221.

<sup>31</sup> Ibid.

<sup>32</sup> International Labor Conference, 91st Session, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, 2003, 219 and 223.

<sup>33</sup> *Trade Practices Act, 1974*, Section 45D-DD. See also *Workplace Relations Act, 1996*, Section 170MW.

<sup>34</sup> Ibid., Section 45 D.

<sup>35</sup> *Workplace Relations Act, 1996*, Section 170MM.

<sup>36</sup> International Labor Conference, 92 nd Session, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, 2004, 40.

<sup>37</sup> International Labor Conference, 91st Session, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, 2003, 219.

<sup>38</sup> International Labor Conference, 88th Session, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, 2000, 220.

<sup>39</sup> International Labor Conference, 92 nd Session, Report (III) (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, 2004, 40.

<sup>40</sup> The number of days lost to strikes is determined by number of days lost per 1,000 workers in a one-year time frame. See DEWR, *DEWR Annual Report 2002-2003*, 128.

<sup>41</sup> *Foreign Labor Trends: Australia*, 12.

The Australian collective bargaining system is a complex system encompassing a variety of agreements, both registered and unregistered, at the Federal level, in which employers and employees outline wages and conditions of work. Most of the States and territories also maintain separate collective bargaining systems based on similar types of agreements that generally differ from Federal instruments in terms of their content and the scope of employers and/or industries covered.

The Federal collective bargaining system is regulated by the WRA, which amended the Industrial Relations Act 1988. The WRA seeks to create more flexibility in the labor market than the 1988 Act and encourage negotiations at the enterprise level.<sup>42</sup> The legislation focuses primarily on three types of agreements, which make up the “awards system”: awards, collective agreements and Australian workplace agreements (AWAs). The WRA provides the parameters for negotiating and certifying the following agreements:

- *Awards* are basic contract agreements outlining minimum terms and conditions of employment for specified companies or industries. Awards are arbitrated decisions, issued by the AIRC at the Federal level, in resolution of disputes between employers and unions. Awards provide only a minimum safety net for workers of a company or industry, and therefore employers and workers are encouraged to enter into agreements based on market conditions at the enterprise level.<sup>43</sup>
- *Collective agreements* are negotiated between employers and groups of workers at the enterprise level. Collective agreements provide a supplemental package of wages and working conditions in place of, or in addition to, awards. In practice, unions usually negotiate collective agreements on behalf of workers. *Multi-business Agreements* are collective agreements negotiated with multiple businesses, or single business agreements where more than one employer is bound. Multi-employer agreements cannot be certified unless an AIRC panel is satisfied that it is in the public interest to do so.<sup>44</sup> *Greenfield Agreements* are collective agreements that allow new businesses to choose the organization with which it will negotiate collective agreements, or AWAs, for the first three years of business.
- *Australian Workplace Agreements (AWAs)*, are certified individual agreements between employers and workers that provide a supplemental package of wages and conditions of work based on market conditions, which may be offered in place of, or in addition to, an award. The WRA does not require employers to offer the same terms and conditions of work outlined in an AWA to all comparable employees.
- Employers and workers are not limited to the three agreement models outlined in the WRA. Many workers are covered by *unregistered common law agreements*. These

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<sup>42</sup> Commonwealth of Australia, *Changes in Federal Workplace Relations Law-Legislation Guide*, Commonwealth of Australia, 1996; available from <http://www.workplace.gov.au/WP/CDA/Files/WP/WR/legguide.pdf>, 4.

<sup>43</sup> Department of Employment and Workplace Relations (DEWR), *Making Federal Agreements*, [referred to as Making Federal Agreements]; [online] [February 2, 2004]; available from <http://www.wagenet.gov.au/WageNet/templates/PageMaker.asp?category=FactSheets&fileName=../FactSheets/DataFiles/General/MakingAgreements.html>.

<sup>44</sup> A multi-business agreement is considered to be in the public interest if the agreement includes issues that would not be better suited to a collective agreement or AWA. The panel of the AIRC is also given the latitude to take into account “any other matter that the Full Bench considers relevant”. See *Workplace Relations Act, 1996*, Section 170LC.

agreements are informal in nature, governed by common law, and do not have to be registered with either the Federal or State industrial relations bodies. Due to their informal nature, only limited information is available regarding the content of these agreements.

Despite efforts by the Federal government to promote the use of AWAs, the vast majority of employers still prefer collective agreements or awards.<sup>45</sup> Some companies prefer to negotiate collective or individual enterprise agreements that can be tailored to fit specific needs, while others, particularly small and medium sized enterprises, prefer to use awards and avoid legal fees and effort required to negotiate enterprise agreements.<sup>46</sup> At present, 38.2 percent of the workforce operates under unregistered common law individual agreements; 35.2 percent under certified collective agreements; and 23.2 percent exclusively under awards.<sup>47</sup> About 1,632,600 workers are covered by collective agreements. In practice, the number of employees covered by collective agreements increases substantially to 2,188,680 when employees receiving wages and working conditions based on expired collective agreements are included.<sup>48</sup> AWAs cover 352,503 employees.

Australia ratified ILO Convention No. 98 on the Right to Organize and Bargain Collectively in 1973.

## **1. Awards**

Federal awards are negotiated by companies or industry associations and unions and taken to the AIRC for dispute resolution or presented to the AIRC as a finalized agreement for certification. Once the AIRC certifies an award, it becomes a legally enforceable instrument. Federal awards apply to employers or members of a federally registered employer organization specifically named in the agreement or an employer who acquires a business that is already named in a Federal award.

Award coverage is concentrated in the unionized sectors of the workforce.<sup>49</sup> Occupations that are not unionized generally operate outside the award system.<sup>50</sup> Workers who are not covered by awards are usually employed by small and medium sized enterprises outside the coverage of the State and Federal industrial systems, and are generally subject to common law employment contracts.<sup>51</sup> The number of employees covered by unregistered common law agreements is especially concentrated among temporary workers and contract workers in small enterprises.

Federal awards are often established to settle an inter-State dispute and there is no sectoral delineation between the State and Federal system. With the enactment of the WRA in 1996,

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<sup>45</sup> U.S. Embassy – Canberra, *unclassified cable no. 1866*.

<sup>46</sup> *Ibid.*

<sup>47</sup> Department of Employment and Workplace Relations (DEWR), *Making Agreements in Australia*, Commonwealth of Australia, December 31, 2001, 21.

<sup>48</sup> DEWR, *DEWR Annual Report 2002-2003*, Workplace Relations, 124.

<sup>49</sup> DEWR, *Making Agreements in Australia*, Figure 3.4.6, 65.

<sup>50</sup> U.S. Embassy – Canberra, *unclassified cable no. 1866*.

<sup>51</sup> DEWR, *Making Agreements in Australia*, 65.

Federal awards are limited to coverage of twenty issues.<sup>52</sup> State awards are not subject to Federal guidelines and are certified or arbitrated by the relevant State industrial tribunals. Victoria, the Northern Territory (NT) and the Australian Capital Territory (ACT) are the only states/territories covered by Federal awards. The contents of State awards are set by State labor laws therefore they may include more than the 20 allowable measures covered under Federal awards. Unlike the Federal award system, the State is not restricted to establishing awards as the result of an arbitration of a dispute. States may also impose “common rules” that bind all employers in a particular industry to an award. In the Australian Capital Territory (ACT), Victoria and Northern Territory (NT) the Federal AIRC may declare and apply the principle of “common rule.”

The work undertaken by State and Federal Commissioners is similar and many Commissioners are licensed to work in both the Federal and State jurisdictions. In the event of a conflict, Federal awards prevail over State laws and State awards, unless the employer is already covered by an active State award.<sup>53</sup>

## **2. Collective Agreements**

Employers and a group of workers (most likely represented by unions) may negotiate a Federal collective agreement, which is reviewed and certified by the AIRC. According to the WRA, the majority of workers to be covered by a Federal Collective Agreement must genuinely approve of the agreement before it can be certified by the AIRC. Employers may not discriminate between unionists and non-unionists or between members of different unions.<sup>54</sup> The WRA clearly states that the AIRC may not certify an agreement unless it passes the “no-disadvantage test,” meaning that it does not violate the minimum standards established by an award to which the employer is bound.<sup>55</sup>

The certified agreement provisions of the WRA also recognize State collective agreements, thus enabling a solely State-based company to choose between making a collective agreement at the

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<sup>52</sup> The 20 issues contained in a federal award are: classifications of employees and skill-based career paths; ordinary time hours of work and the times within which they are performed; rest breaks, notice periods and variations to working hours (but awards will not be able to set maximum or minimum hours of work for regular part-time employees); rates of pay (such as hourly rates and annual salaries), rates of pay for juniors, trainees or apprentices, and rates of pay for employees under the supported wage system; incentive based payments, piece rates and bonuses; annual leave and leave loadings; long service leave; personal leave (e.g. sick leave, family leave); parental leave, (e.g. maternity leave); public holidays; allowances; overtime, casual and shift work; penalty rates; redundancy pay; notice of termination; stand-down provisions; dispute settling procedures; jury service; type of employment, e.g. full-time, casual, regular part-time); minimum number of consecutive hours or a regular pattern in the hours that a regular part-time employee work; super annuation; pay and conditions for outworkers but only to the extent necessary to ensure that their overall pay and conditions are fair and reasonable in comparison with employees who perform the same kind of work at an employer’s business or commercial premises; and anti-discrimination clauses may also be found in an award. *Awards*, [online] [cited February 10, 2004] available from

<http://www.wagenet.gov.au/WageNet/templates/PageMaker.asp?category=FactSheets&fileName=/Wagenet/FactSheets/DataFiles/General/Awards.html>.

<sup>53</sup> *Workplace Relations Act, 1996*, Section 152.

<sup>54</sup> *Ibid.*, Section 170MDA.

<sup>55</sup> *Ibid.*, Section.170LT.



Federal or State level.<sup>56</sup> Federal collective agreements prevail over State awards or State agreements in case of inconsistencies.<sup>57</sup>

While the majority of collective bargaining agreements are enterprise-level, 18 multiple business agreements were certified by the AIRC in a two-year timeframe (2000-2001), which covered 1,540 employers and 28,064 employees.<sup>58</sup> Before certifying such an agreement, an AIRC panel must determine whether a multi-business agreement is in the national interest or whether it would be more appropriate to address the issues raised in the agreement within the context of an enterprise level collective agreement or through AWAs.<sup>59</sup>

Greenfield agreements allow a new business to choose the organization with which it will negotiate the terms and conditions of work for one agreement period covering up to three years. Such agreements are intended for employers proposing to establish a new business and are put in place prior to hiring employees.<sup>60</sup> The use of greenfield agreements is common within the construction industry, which accounted for 70 percent of greenfields agreements made in 2000-2001. A similar percentage was reported for 1998 and 1999.<sup>61</sup>

The ILO CEACR noted in 2000 that, even though this procedure is permissible only for the first bargaining agreement, it nevertheless prejudices workers' choice of a bargaining agent.<sup>62</sup> The Committee requested that the Government review and amend the WRA to ensure that the choice of a bargaining agent is made by the workers themselves, including in relationships with a new business.<sup>63</sup>

### **3. Australian Workplace Agreements (AWAs)**

Federal AWAs are individual agreements that may be negotiated collectively, but are required to be signed individually.<sup>64</sup> By law, the employer must provide the employee with a copy of the AWA, explain the effect of the agreement to the employee prior to signing, and obtain the genuine consent of the employee regarding its provisions.<sup>65</sup> The WRA prohibits the disclosure of information related to the content of an AWA, except for the use of the Government in authorized instances. AWAs are also required by law to contain anti-discrimination provisions, dispute resolution procedures, and may not violate the minimum standards established by an award to which the employer is bound.<sup>66</sup> The OEA must consider the needs of workers in a disadvantaged bargaining position (women, non-English speakers, youth, apprentices and outworkers); assist workers in balancing work and family responsibilities; and promote improved

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<sup>56</sup> Ibid., Section 170MDA.

<sup>57</sup> Making Federal Agreements, [online] [cited April 16, 2004] available from <http://www.wagenet.gov.au/wagenet/templates/PageMaker.asp?category=FactSheets&fileName=../FactSheets/DataFiles/General/MakingAgreements.html>.

<sup>58</sup> DEWR, *Making Agreements in Australia*, 57.

<sup>59</sup> *Workplace Relations Act, 1996*, Section 170LC, 207.

<sup>60</sup> Ibid., Section 170LL.

<sup>61</sup> DEWR, *Making Agreements in Australia*, 57.

<sup>62</sup> International Labor Organization, Report on the Committee of Experts – Australia, Convention No. 98 Report III (1A) 2000, 223.

<sup>63</sup> Ibid.

<sup>64</sup> *Workplace Relations Act, 1996*, Section 170VF and 170VG.

<sup>65</sup> Ibid., Section 170VPA.

<sup>66</sup> Ibid., Section.170LT.

industrial relations through AWAs.<sup>67</sup> If the OEA determines that an agreement does not meet the criteria listed above, the AWA is referred to the AIRC for dispute resolution. Once certified, the agreement may run for no longer than three years.<sup>68</sup>

An AWA takes primacy over both Federal and State awards, although the law states that an AWA may not be certified if the employer is bound to a current award. An AWA takes primacy over State laws, State awards, and/or certified agreements that otherwise apply to the employee's employment.<sup>69</sup> However, an AWA is subject to the "no disadvantage test," which evaluates whether the agreement would result in a reduction in the overall terms and conditions of employment of the employees covered by an award.

The ILO Committee on Freedom of Association (CFA) and the CEACR have both expressed concern that the WRA gives primacy to individual bargaining relationships over collective relations through the AWAs and, as a consequence, does not promote voluntary collective bargaining as required by ILO Convention No. 98.<sup>70</sup> The CEACR also has expressed concern that the WRA gives preference to workplace/enterprise level bargaining over multi-employer bargaining and requested that the Government of Australia amend the WRA to ensure that collective bargaining not only be allowed, but also encouraged at a level determined by the bargaining parties.<sup>71</sup> The Government of Australia rejected the committee's findings and claims that they are due to a lack of understanding of Australia's unique labor laws.<sup>72</sup> A dialogue between the Government and the ILO regarding this issue is ongoing.

### **C. Prohibition of Forced or Compulsory Labor**

Forced or bonded labor is not commonly practiced. The Criminal Code outlaws slavery and sexual servitude, and State and Territory criminal laws are consistent with it. State police forces have primary jurisdiction for the investigation and prosecution of allegations of slavery or sexual servitude.

Australia is a destination country for a small number of trafficked women.<sup>73</sup> Under the Criminal Code Amendment, Slavery and Sexual Servitude Act of 1999, engaging in slavery, sexual servitude and deceptive recruiting is punishable by up to twenty-five years imprisonment for an individual and up to AUS\$9.9 million in fines for a corporation.<sup>74</sup> In 2002, the Government created the post of "Ambassador for People Smuggling Issues" to help promote a coherent and effective international approach to combating trafficking in persons. The Government recently provided \$4.8 million to support the efforts of local institutions to combat trafficking in Cambodia, Laos, Burma and Thailand.

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<sup>67</sup> Ibid., Section 83 BB.

<sup>68</sup> Ibid., Section 170VPF.

<sup>69</sup> Ibid., Section 170.

<sup>70</sup> 320<sup>th</sup> Report of the Committee on Freedom of Association, Case No. 1963, Paragraph 238, 67.

<sup>71</sup> International Labor Organization, Report on the Committee of Experts – Australia, Convention No. 98 Report III (1A) 2000, 223.

<sup>72</sup> Department of Employment and Workplace Relations (DEWR), Rex Hoy, Group Manager, Workplace Relations Policy Group, Government of Australia, letter to USDOL official, November 27, 2003.

<sup>73</sup> U.S. Embassy – Canberra, *unclassified cable no. 1866*.

<sup>74</sup> Government of Australia, *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999*, No. 104, 1999, as cited in *The Protection Project Legal Library*, [database online], Sections 270.6 and 270.8; available from: <http://209.190.246.239/protectionproject/StatutesPDF/Australialaw.pdf>.

Australia ratified ILO Convention No. 29 on Forced Labor in 1932 and ILO Convention No. 105 on the Abolition of Forced Labor in 1960.

#### **D. Minimum Age for Employment of Children and Effective Elimination of the Worst Forms of Child Labor**

While there is no federal legislation in Australia setting a minimum age for employment,<sup>75</sup> states and territories regulate the employment of children through laws setting minimum ages for leaving compulsory education, claiming unemployment benefits, and entering into certain occupations.<sup>76</sup> Additionally, many collective bargaining agreements and AIRC and State IRC awards regulate various aspects of the employment of children and young people. Further, state laws place responsibilities on employers regarding occupational safety and health for young people. In 2001 and 2003, laws enacted in the States of Victoria and New South Wales strengthened protections for children in the workplace, and in Victoria increased fines for child labor abuses.

Imposing conditions amounting to slavery carries a penalty of up to 25 years imprisonment under the Criminal Code Amendment (Slavery and Sexual Servitude) Act of 1999. Under this Act, forcing or intending to force a child under 18 years to provide sexual services, or having knowledge of such activity, warrants a penalty of 19 years imprisonment.<sup>77</sup> The Crimes (Child Sex Tourism) Amendment Act of 1994 carries a penalty of 17 years imprisonment for Australians who travel abroad for the purpose of sexual exploitation of a child under 16 years.<sup>78</sup> The Migration Act carries penalties of up to 20 years for the smuggling of human beings, including trafficking in persons. Sexual servitude, slavery, people smuggling, and child sex tourism offenses have been included as serious offenses in the Proceeds of Crime Act of 2002, which provides for the forfeiture of assets of the guilty party.<sup>79</sup>

The Government of Australia has not ratified ILO Convention 182 on the Worst Forms of Child Labor, or ILO Convention 138 on the Minimum Age for Admission to Employment. On October 8, 2003, the Government of Australia tabled ILO Convention 182 and an accompanying National Interest Analysis at a meeting of an Australian parliamentary committee, signaling an intent to ratify. However, the Analysis statement recommended the postponement of ratification

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<sup>75</sup> U.S. Department of State, *Country Reports – 2003: Australia*, Section 6d.

<sup>76</sup> UN Committee on the Rights of the Child, *Initial Reports of States Parties due in 1993*, CRC/C/8/Add.31, prepared by the Government of Australia, pursuant to Article 44 of the Convention on the Rights of the Child, Geneva, January 2, 1996, para. 132. See also U.S. Department of State, *Country Reports – 2003: Australia*, Section 6d. Specific laws regulating the employment of children under the age of 15 years include the Australian Capital Territory *Children's Services Act of 1986*; the New South Wales *Children (Care and Protection) Act of 1987*; the Northern Territory *Education Act of 1979*, and the *Community Welfare Act*; the Queensland *Education Act of 1989*, and the *Children's Services Act of 1965*; the Tasmania *Child Welfare Act of 1960*; the Victoria *Community Services Act of 1970*; and the Western Australia *Child Welfare Act of 1947*. See UN Committee on the Rights of the Child, *Initial Reports*, paras. 1698, 1699, 1702, 1704-6, 1710-12, and 1716.

<sup>77</sup> Section 270.6(2)(b) calls for such penalty for a person “who knows about, or is reckless as to, that sexual servitude.” See *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999*, Sections 270.6 and 270.8.

<sup>78</sup> *Crimes (Child Sex Tourism) Amendment Act 1994*, as cited in The Protection Project Legal Library, [database online], Division 2, Article 50BA; available from: <http://209.190.246.239/protectionproject/StatutesPDF/Australialaw.pdf>.

<sup>79</sup> *Proceeds of Crime Act 2002*, No. 85, 2002, Section 338; available from: <http://vigilant.tv/documents/proceeds-of-crime-2002.pdf>.

until all state and territory laws complied with the treaty's obligations.<sup>80</sup> Four states were in the process of amending legislation to come into compliance with the obligations of Convention 182.<sup>81</sup>

Australian States do not collect statistics on children engaged in harmful child labor, as this is not considered to be a significant problem.<sup>82</sup> However, the use of child labor in sweatshops and children working in the home in both Sydney and Melbourne has been reported in the past.<sup>83</sup>

The Government of Australia reported in 1998 that children under 17 years are generally not recruited into the armed services, although there is no national legislation setting a minimum age for recruitment. On June 28, 2002, a defense instruction was issued prohibiting the deployment of persons under the age of 18 years into areas of hostility.<sup>84</sup>

Instances of forced or bonded child labor are rare. Australia is reported to be a destination for children trafficked primarily from Asia for the purpose of commercial sexual exploitation. It is reported that child prostitution exists in some cities, and children are exploited in pornography.<sup>85</sup>

Education in Australia is free, compulsory, and publicly funded. State and territory legislation makes education compulsory for children ages 6 to 15, with the exception of Tasmania where it is compulsory until the age of 16. In 2000, the gross primary enrollment rate was 102.1 percent and the net primary enrollment rate was 95.7 percent.<sup>86</sup> It has been reported that 67 percent of children in Australia complete 12 years of school.<sup>87</sup>

The Government of Australia has undertaken a number of efforts to address exploitative child labor. State and territory-level agencies overseeing education monitor and enforce compulsory education laws.<sup>88</sup> The federal Department of Family and Community Services plays a

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<sup>80</sup> U.S. Embassy-Canberra, *unclassified telegram no. 2345*, November 3, 2003. See also Hoy, letter to USDOL official, November 27, 2003.

<sup>81</sup> Australian Capital Territory, one of the four non-complying jurisdictions, tabled amended legislation on May 14, 2004. See Labor Officer, U.S. Embassy-Canberra, email communication to USDOL official, May 20, 2004.

<sup>82</sup> Hoy, letter, November 27, 2003.

<sup>83</sup> U.S. Department of State, *Country Reports – 2002: Australia*, Section 6d. In addition, the Australian Textile, Clothing, and Footwear Union estimated in 2000 that 70,000 children as young as 8 years work shifts after school and on weekends and holidays in Australia's home-based garment industry. Such instances were alleged to occur among newly migrated communities. See Maquila Solidarity Network, News and Notes, *Child Labour in Australia*, February 2000; available from: <http://www.maquilasolidarity.org/resources/update/Vol501.htm>. See also Clean Clothes Campaign, *Child Labour in Australian garment industry*, January 1, 2000, available from: <http://www.cleanclothes.org/campaign/00-01hwaus.htm>.

<sup>84</sup> Defence Instruction (General) Personnel 33-4, entitled, *Recruitment and Employment of Members under 18 years in the Australian Defence Force*, as cited in Hoy, letter, 27 Nov. 2003.

<sup>85</sup> Anna Grant, Dr. Peter Grabosky, and Fiona David, *The Commercial Sexual Exploitation of Children*, presented at the Children and Crime: Victims and Offenders Conference, Brisbane, June 17-18, 1999, 2-3; available from: <http://www.aic.gov.au/conferences/children/grant.pdf>. It has also been alleged that children are exploited in brothels, in escort services, and as strippers. See ECPAT International, *Australia*, in ECPAT International, [database online] 2002 [cited November 25, 2003]; available from [http://www.ecpat.net/eng/Ecpat-inter/projects/monitoring/online\\_database/index.asp](http://www.ecpat.net/eng/Ecpat-inter/projects/monitoring/online_database/index.asp).

<sup>86</sup> UNESCO, *Primary Education Indicators*, in *Global Education Database* [online] [cited November 25, 2003]; available from: [http://esdb.cdie.org/cgi-bin/broker.exe?\\_program=gedprogs.prim\\_1.sas&\\_service=default](http://esdb.cdie.org/cgi-bin/broker.exe?_program=gedprogs.prim_1.sas&_service=default).

<sup>87</sup> U.S. Department of State, *Country Reports – 2002: Australia*, Section 5.

<sup>88</sup> UN Committee on the Rights of the Child, *Initial Reports*, paras. 1178-1232.

consultative role in monitoring children's rights in Australia.<sup>89</sup> The Australian Broadcasting Authority investigates complaints of Internet-based child pornography. Specialized task forces have been set up at the State level to be used in criminal prosecutions involving child victims. The Department of Immigration and Multicultural Affairs and the Australian Federal Police have jurisdiction in trafficking matters. Enforcement of legislation concerning education and employments rests with individual States and territories.

The Government of Australia provides subsidies in the form of income support to families in need to ensure equal education opportunities.<sup>90</sup> In 1994, efforts were undertaken to reform the Australian Vocational Training System, which included the integration of vocational education into the secondary curriculum.<sup>91</sup> It has been reported that in isolated, rural areas, children can participate in school through radio programs or receive government subsidies for boarding school.<sup>92</sup>

In 2000, the Department of Family and Community Services, in cooperation with NGOs, released Australia's National Plan of Action Against the Commercial Sexual Exploitation of Children.<sup>93</sup> In 2001, a government anti-trafficking unit was established in New South Wales.<sup>94</sup> In February 2002, the position of Ambassador for People Smuggling Issues was created in the Department of Foreign Affairs and Trade to promote an effective international approach to people smuggling, particularly in the Asia-Pacific region.<sup>95</sup> To prevent trafficking, the Government of Australia and the air travel industry participate jointly in the International Air Transport Association Control Authorities Working Group.<sup>96</sup> The Government of Australia has also signed a memorandum of understanding with the Philippines and Fiji to cooperate on law enforcement initiatives to combat child sexual abuse. Similar links exist between Australia and Thailand and Indonesia.<sup>97</sup>

The Commonwealth Attorney-General twice annually conducts formal consultations on human rights, including children's issues, with representatives from NGOs.<sup>98</sup> The Government of

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<sup>89</sup> Department of Family and Community Services, *Tomorrow's Children: Australia's National Plan of Action Against the Commercial Sexual Exploitation of Children*, Canberra, 2000, 27.

<sup>90</sup> UN Committee on the Rights of the Child, *Initial Reports of States Parties due in 1993*, CRC/C/8/Add.31, prepared by Government of Australia, pursuant to Article 44 of the Convention on the Rights of the Child, Geneva, January 2, 1996, para. 37.

<sup>91</sup> *Ibid.*, para. 36 and 38.

<sup>92</sup> U.S. Department of State, *Country Reports – 2002: Australia*, Section 5.

<sup>93</sup> *Ibid.* See ECPAT International, *Australia*. See generally Department of Family and Community Services, *Tomorrow's Children*, 2000.

<sup>94</sup> U.S. Department of State, *Country Reports – 2002: Australia*, Section 6f.

<sup>95</sup> *Ibid.* See also Hon. Alexander Downer, MP, *Ambassador for People Smuggling Issues*, (Joint Media Release) February 28, 2002 [cited December 1, 2003]; available from [http://www.foreignminister.gov.au/releases/2002/fa027\\_02.html](http://www.foreignminister.gov.au/releases/2002/fa027_02.html).

<sup>96</sup> The Working Group serves as a forum between airlines and immigration officials on the issue of the control of illegal migration. See Department of Family and Community Services, *Tomorrow's Children*, 2000, 21.

<sup>97</sup> ECPAT International, *Australia*. See also Downer, *Australia-Fiji Memorandum of Understanding for Joint Action to Combat Child Sexual Abuse and Other Serious Crimes*, (Media Release) December 18, 1998 [cited December 3, 2003]; available from [http://www.dfat.gov.au/media/releases/foreign/1998/fa154\\_98.html](http://www.dfat.gov.au/media/releases/foreign/1998/fa154_98.html). See also Grant, Grabosky, and David, *The Commercial Sexual Exploitation of Children*, 8.

<sup>98</sup> ILO, *The effective abolition of child labour: Australia*, 208; available from <http://www.ilo.org/public/english/standards/relm/gb/docs/gb280/pdf/gb-3-2-abol.pdf>.

Australia has provided funding to some of the NGOs of the consortium, Project Respect, which works to combat commercial sexual exploitation and trafficking of children.<sup>99</sup>

Australia has been an ILO-IPEC donor country since 1995.<sup>100</sup> In addition, Australian Aid (AUSAID) funds several overseas projects, primarily in the Southeast Asia region, that focus on children.<sup>101</sup> In particular, AUSAID is funding a 3-year regional capacity-building project to prevent cross-border trafficking of persons in Burma, Cambodia, Laos, and Thailand.<sup>102</sup> The Government of Australia has also provided funding for a United Nations Development Program project to combat trafficking in women and children and an International Organization for Migration project to assist victims of trafficking in Southeast Asian countries.<sup>103</sup>

## **E. Acceptable Conditions of Work**

### **1. Minimum Wage**

Although Australia has both Federal and State legal minimum wages, most workers are paid well above these minimums. Minimum wage rates differ by State and territory and are also determined by occupational classifications. The AIRC reviews, on an annual basis, petition applications submitted by the Australian Council of Trade Unions (ACTU), seeking adjustments to the Federal minimum wage. Submissions are made in December and hearings held in March to determine the needs of low wage earners and the effects of adjustments. The AIRC takes into consideration recommendations submitted by the Government, business groups and non-governmental organizations, and issues determinations or “awards” that are legally binding at the Federal level. Immediately following any Federal increase, the individual State Union Councils always apply to the State Industrial Commissions to increase State wages by a similar amount.<sup>104</sup> The State commissions consider the unions’ submissions, together with input from employers groups, to make a final determination for each State’s minimum wage.

This transfer of the Federal minimum wage to the State/territory level is referred to as the “flow-through” or the “flow-on” of the Federal minimum wage increases. The general practice is to support the Federal flow on increases in order to maintain consistency between the Federal and State minimum wages.<sup>105</sup>

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<sup>99</sup> U.S. Department of State, *Country Reports – 2002: Australia*, Section 6f.

<sup>100</sup> ILO-IPEC, All About IPEC: Donor Countries, [online] [cited December 9, 2003]; available from [http://www.ilo.org/public/english/standards/ipec/about/donors/t\\_donor.htm](http://www.ilo.org/public/english/standards/ipec/about/donors/t_donor.htm).

<sup>101</sup> In 1999-2000 AUSAID spent AUD 18 million on initiatives to combat commercial sexual exploitation of children and AUD 259.2 million for education projects. See Department of Family and Community Services, *Tomorrow’s Children*, 2000, 4, 15. AUSAID education spending for 2003-2004 is estimated to increase to AUD 270 million. See AUSAID, *Key Aid Sectors: Education* [online] [cited December 3, 2003]; available from <http://www.aisaid.gov.au/keyaid/education.cfm#assistance>.

<sup>102</sup> The program began in 2003. See AUSAID, *Regional East Asia* [online] [cited December 3, 2003]; available from <http://www.aisaid.gov.au/country/country.cfm?CountryId=82431878>.

<sup>103</sup> U.S. Department of State, *Country Reports – 2002: Australia*, Section 6f.

<sup>104</sup> U.S. Embassy – Canberra, electronic communication, January 23, 2004.

<sup>105</sup> U.S. Embassy – Canberra, *unclassified cable no. 1866*.

On May 6, 2003 the AIRC increased the full-time adult minimum wage by AUS\$17 (US\$13.37) to AUS\$471 (US\$352.60) per week.<sup>106</sup> Employees who work part time or have fluctuating work schedules, commonly referred to as casual workers, must be paid no less than the hourly equivalent.

Wages are generally paid either weekly or bi-weekly, depending on the employers' pay period. The employer may pay in cash, check or by electronic payment, and wages or salaries must be paid no later than 48 hours after the agreed upon timeframe.

Australia ratified ILO Convention 26 on Minimum Wage-Fixing Machinery of 1928 on March 9, 1931, Convention 99 on Minimum Wage-Fixing Machinery (Agriculture) of 1951 on June 19, 1969, and Convention 131 on Minimum Wage Fixing of 1970, on June 15, 1973.

## **2. Hours of Work**

The AIRC effectively regulates hours of work through its award system. Maximum hours of work permitted without overtime payment are fixed differently, depending on the job classification and the State/territory in which the work is performed. In general, ordinary working hours may not exceed 8 hours per day or 36-40 hours per week.<sup>107</sup> For example, in the Australian Capital Territory (ACT), there are twenty-one different job classifications. The hours of ordinary work for the "miscellaneous worker" classification may not exceed 8 hours per day or 38 hours per week. These hours must be worked in a twenty-day four-week cycle of eight hours each day, Monday through Friday, between the hours of 6:00am and 6:00pm with the fourth Monday in each cycle taken off with pay.

Breaks consist of a mandatory meal break of not less than 30 minutes for day workers and not less than 20 minutes for shift workers. All workers working a full shift must receive a ten minute paid break. Any employee who works overtime is entitled to a paid break of twenty minutes for every four hours of overtime.

Overtime rates are considered a penalty against the employer and referred to as overtime penalty pay. Overtime pay is generally one and half times the ordinary pay for any hours worked over the ordinary workday or week that is mandated by the individual awards. Just as in the case of the minimum wage, the overtime pay varies among States and territories and by occupation. Miscellaneous workers employed in the Australian Capitol Territory, would be paid time and a half for the first two hours that exceed the ordinary work hours and double time thereafter.

Full time employees usually receive between 10 and 12 holidays per year depending on what is stated in the individual awards. Casual employees receive a higher hourly wage rate in lieu of leave provisions and generally are not paid for non-work public holidays.

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<sup>106</sup> Department of Employment and Workplace Relations (DEWR), *The Federal Minimum Wage*, [online] [cited November 23, 2003] available from <http://www.wagenet.gov.au/Wagenet/Search/view.asp?docid=191119&query=&page=15&quickview=Y>. See also U.S. Embassy Canberra, electronic communication, January 23, 2004.

<sup>107</sup> U.S. Department of State, *Country Reports – 2002: Australia*, Section 6e. See also Labor Officer – U.S. Embassy Canberra, electronic communication, February 11, 2004.

All workers, except casual workers, receive six paid national holidays. Individual States and territories have additional differing holidays. For example, workers within the Australian Capital Territory receive an additional five territorial holidays, which, combined with the six national holidays, yield a total of 11 legal holidays. Double time is required for work performed on any holiday.

Awards usually entitle workers to four weeks paid annual leave per year and grant additional leave benefits for shift workers and workers in remote localities.

Until 1980, hours worked in Australia were considered low by global standards. However, since 1980 the number of working hours has steadily increased. In response to long working hours and claims that work has become increasingly intense, the ACTU is spearheading a “Reasonable Hours Campaign” designed to raise awareness about the effect of long working hours. Australia is now ranked second among the OECD countries in terms of hours worked per capita and more and more Australians are willing to sacrifice higher pay for shorter hours.<sup>108</sup>

The Australian Government ratified Convention 47 regarding the Forty-Hour Week on October 22, 1970.

### **3. Occupational Safety and Health**

Because Australia does not grant the Federal Government legislative powers regarding occupational health and safety (OHS), the States and territories are responsible for enacting and enforcing these laws and regulations. As a consequence, there are six different State acts, two territorial acts, a Commonwealth Act covering Commonwealth employees, and a Commonwealth Act covering the maritime industry.

The National Occupational Health and Safety Commission (NOHSC), created by the Federal Government in 1985, seeks to address the lack of conformity of safety and health regulations throughout the country. The main role of the NOHSC is to provide expert advice to each individual State Workplace Relations Ministers Council (WRMC). In recent years, the NOHSC became responsible for the implementation of the national OHS strategic plan. Acting as an assembly for open discussions between the Commonwealth government, employer organizations, trade unions, and State and territorial governments, these discussions are designed to provide a forum to negotiate and develop national policies directed toward OHS.

The relevant State WRMC’s are made up of Federal, State, and territorial ministers responsible for workplace regulations in the individual jurisdictions. The council usually meets twice a year in May and November. After the meetings, the WRMC publishes reports on an annual basis setting OHS targets and monitoring State and territorial performance.

Employers are required by common law to provide employees with a safe workplace. In New South Wales and Queensland, an absolute responsibility is placed on the employer. In all other States and territories the employer is held to ensure the health and safety of workers, so far as is reasonably practicable.

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<sup>108</sup> Australian Council of Trade Unions, *Reasonable Hours* [online] [cited November 23, 2003] available from <http://www.actu.asn.au/public/campaigns/reasonable.html>.



Each State has specific OHS requirements that employers must follow. These requirements, known as the “Duty of Care,” specifically define the duties of employers and employees who play a role in workplace health and safety. Other such defined duties are designed to control the risks involved in extreme workplace hazards that have the potential to cause severe injury or disease.

Federal law provides Federal government employees with the right to cease work without fear of reprisal if they believe that work activities pose an immediate threat to health or safety. Most States and territories have laws that grant similar rights to their employees. In Tasmania, Western Australia and the Northern Territory, employees may cease working if they determine that the working environment poses an immediate threat to their health or safety. In Victoria, Southern Australia and the Australian Capital Territory, workers are allowed to cease work if a workplace health and safety worker representative determines that unsafe working conditions exist. In Queensland and New South Wales, an inspector must issue a prohibition notice before an employee may cease working without the approval of his employer. Employees also have recourse through State health and safety commissions, whose inspectors investigate complaints and can require remedial action.

Australian OHS statutes give inspectors a large degree of authority and latitude, which enables them to issue improvement and prohibition notices, allow time to correct violations that have been cited, or to prohibit certain work activities until the violation or hazard has been remedied. Ultimately, violators may be prosecuted. Although the authority and powers given to the inspectors are similar among most States and territories, the fines for breaches of OHS regulations vary: the maximum fine in the Northern Territory is AUS\$125,895 (US\$96,450), while the same violation can be assessed as high as AUS\$580,258 (US\$434,000) or AUS\$895,790 (US\$670,000) for repeat offenses in New South Wales.<sup>109</sup>

In cases of serious violations resulting in fatalities or grave injuries, Australian prosecutors have increasingly sought to pursue criminal charges, such as manslaughter, against culpable parties.<sup>110</sup> The Australian Capital Territory was the first jurisdiction to enact industrial manslaughter legislation, which permits the court to impose a prison sentence on a culpable employer who causes the death of an employee. Union councils in most States and the other Territories have embarked on campaigns to have parliaments enact similar legislation.

According to the ILO’s Safe Work Program, Australia had 275 fatal occupational related incidents in 2002.

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<sup>109</sup> National Research Centre for Occupational Health and Safety Regulation, *About Occupational Health and Safety Regulation in Australia*. [online] [cited January 12, 2003] available from <http://www.ohs.anu.edu.au/ohs/index.html>.

<sup>110</sup> Ibid.